

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM C. KURTZ

Appeal No. 2004-0191
Application No. 09/072,241

ON BRIEF

Before COHEN, ABRAMS, and FRANKFORT, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 18, 19 and 21-27. Claims 6, 7 and 11 have been withdrawn from consideration as being drawn to a non-elected invention, claims 28-32 have been allowed, and the remaining claims have been canceled.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a loader. An understanding of the invention can be derived from a reading of exemplary claim 21, which has been reproduced in an appendix to the Brief.

The single prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Hoar <u>et al.</u> (Hoar)	2,538,000	Jan 16, 1951
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Claims 18, 19 and 21-27 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Claims 21, 22 and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hoar.¹

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 30) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 29) and Reply Brief (Paper No. 32) for the appellant's arguments thereagainst.

OPINION

¹A rejection of claims 23-25 under 35 U.S.C. § 102(b) was withdrawn in the Answer.

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The appellant's invention is directed to mobile loaders of the short wheelbase type in which a load support is lifted and extended forward of the loader. According to the appellant, the load supports cannot be extended very far forward without unbalancing the loader, and the prior art solutions of providing counterweights on the opposite end of the loader or extending the wheelbase have disadvantages. The appellant's invention is directed to solving this problem by providing a loader lift mechanism and method of vertically raising a load which improves upon the prior art machines.

The Rejection Under The First Paragraph Of Section 112

The examiner has taken the position that the original specification does not support horizontally shifting the load responsive to and throughout the moving step in claim 21 or throughout the movements in claims 22-25, a limitation which the examiner states was added by amendment (Papers No. 15 and 17). According to the examiner, the original specification discloses only forward movement of the load support, whereas the claimed subject matter in issue requires that the load support move forward throughout the moving step (Answer, page 4). The appellant argues that the operation

of the device as explained on page 5 of the specification as originally filed provides support for the disputed term because it makes it clear that extension of the power unit 14 causes stabilizer arm 17 to force arm 13 forward at the outset of the lifting operation and thus the load support begins a horizontal movement at that point which continues until the lifting step is terminated.

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. See Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1116-17 (Fed. Cir. 1991) and In re Kaslow, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983).

It is apparent to us that, with reference to page 5 of the specification and Figures 1 and 3, link 25 is caused to pivot from the position shown in Figure 1 at the outset of the lifting operation to that of Figure 3, wherein the lifting is terminated. As link 25 pivots, ends 21 of the loader arms, to which the load support is attached, begin an arcuate movement which has a forward component throughout the entire lifting operation. Thus, while this feature might not have been disclosed in the specification in the terminology now present in the claims, it is our view that the disputed phraseology

nevertheless is supported by the original disclosure and, applying the guidance from our reviewing set out above, the rejection is not well taken.

The rejection of claims 18, 19 and 21-27 under 35 U.S.C. § 112, first paragraph, therefore is not sustained.

The Rejection Under Section 102

Independent claim 21 and dependent claims 22 and 26 stand rejected as being anticipated by Hoar. Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). Anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or recognition of inherent properties that may be possessed by the reference. See Verdegaal Brothers Inc. v. Union Oil Co. of California, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987). Nor does it require that the reference teach what the applicant is claiming, but only that the claim on appeal "read on" something disclosed in the reference, *i.e.*, all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984).

Hoar discloses a propelled loader for raising a load from a first ground-level position to a second raised position. It utilizes a linkage means comprising first, second, third and fourth arm pivots, with the first and fourth arm pivots forming a first diagonal line segment therebetween and the second and third forming a second diagonal line segment therebetween, as is explained by the examiner on page 5 of the Answer. The appellant has not contended that the Hoar machine fails to operate in the manner recited in the first four steps of independent method claim 21. The argument advanced by the appellant in opposition to the examiner's rejection focuses on the final two steps recited in the claim, which read as follows:

moving said first pivotal arm about said first arm pivot and said second pivotal arm about said third arm pivot to vertically raise said load from said first ground-level position to said raised unloading position; and

horizontally shifting said load support responsive to and throughout said moving step in a direction corresponding to the direction of horizontal displacement between said load and said mobile base.

As we understand the appellant's argument, it is that Hoar does not disclose or teach the step of horizontally shifting the load support in the direction of horizontal displacement "throughout the load lifting process" because in the Hoar operation the second pivot (at the upper end of link 28) and the proximal portion of arms 30 shift horizontally backwards in the initial stages of operation with respect to the first pivot (at the lower end of link 28) before moving in the direction of horizontal displacement between the load and the mobile base (see Brief, pages 7 and 8). In support of this

conclusion, the appellant points to the diagram of operation shown in Figure 2 of Hoar, wherein the corresponding positions of certain of the components are shown in dashed lines.

We do not agree with the appellant's position, based upon the following reasoning. Claim 21 merely recites a "load support," which in our view is broad enough to read on the distal portion of Hoar's arms 30 at numeral 41, which denotes the center of gravity of the load. This "load support" is "engaging" the first pivotal arm 28, as is earlier specified in claim 21, through the proximal portion of arms 30. As recited in the penultimate step of claim 21, the appellant's method recites the step of "moving [the first and second pivot arms] . . . to vertically raise said load from said ground-level position to said raised unloading position." Thus, the "moving" step commences when the load begins to be vertically raised from the ground-level position and ends when the load is in the raised unloading position. The final step of claim 21 states that the "load support" is horizontally shifted in the direction corresponding to the direction of horizontal displacement from the mobile base "throughout" the "moving step," that is, from the time the load begins to be lifted to the time it no longer is being lifted.

From our perspective, the diagram of operation of the Hoar mechanism actually supports the examiner's position that these steps read on the Hoar method of operation. In particular, as shown in Figure 2, the path of the "load support" as indicated by 41 moves in an arc having a constant horizontal displacement during lifting

between points “0” and “7”. It is true that during the initial stages of operation of the Hoar system pivot arm 28 moves horizontally backward through points “1”, “2” and “3”, and the proximal ends of arms 30 describe a backward arc during that same period. Nevertheless, owing to the construction and relationship of the various components, the distal ends of the arms, which comprise the “load support,” do not move backward at any time during the vertical lifting operation. Thus, we find the appellant’s argument not to be persuasive.

It is our conclusion that the subject matter recited in claim 21 reads on the method by which the system disclosed in Hoar operates, and therefore this reference anticipates the claim and the Section 102 rejection will be sustained.

Claim 22 adds to claim 21 further steps comprising locating the first and fourth arm pivots to form a first diagonal line segment and the second and third arm pivots to form a second diagonal line segment. This is present in Hoar, where the first arm pivot (27) and the fourth arm pivot (37), and the second arm pivot (at the upper end of arm 28) and the third arm pivot (32) are so arranged. It is clear from comparing the positions of the arm pivots in Figures 1 and 2 that they move in the manner required by claim 22 “throughout” the step of “moving” the load. This rejection of claim 22 is sustained.

Claim 26 adds to claim 21 the step of applying a force “primarily vertically” between the mobile base and the load support. The appellant’s argument that this is

not taught by Hoar because Hoar uses a horizontally oriented hydraulic cylinder that does not directly act on the load support (Brief, page 10) is not persuasive for two reasons. First, the claim doesn't require a hydraulic cylinder, much less that it act directly on the load support. Second, Hoar's mechanism does apply a primarily vertical force between the base and the load support, in that the force generated by hydraulic cylinder 35, albeit not acting in the vertical direction, nevertheless causes arm pivot 37 and the load support by the application of a primarily vertical force through its connection with link 33. The rejection of claim 26 is sustained.

CONCLUSION

The rejection of claims 18, 19 and 21-27 under 35 U.S.C. § 112, first paragraph, is not sustained.

The rejection of claims 21, 22 and 26 under 35 U.S.C. § 102(b) as being anticipated by Hoar is sustained.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

IRWIN CHARLES COHEN
Administrative Patent Judge

NEAL E. ABRAMS
Administrative Patent Judge

CHARLES E. FRANKFORT
Administrative Patent Judge

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Appeal No. 2004-0191
Application No. 09/072,241

Page 11

ALBERT W. WATKINS
30844 NE 1ST AVENUE
ST. JOSEPH, MN 56374